

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSEPH GAROFALO,

Plaintiff, **NOTICE OF REMOVAL**

-against-

Case No.

NEW YORK CITY, New York, and KEECHANT
SEWELL, in her official capacity,

ECF Case

Defendants.
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**TO: THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK**

Defendants, the City of New York (“City”) and Keechant Sewell, Commissioner of the New York City Police Department (collectively “Defendants”), by and through their attorney, Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, hereby file this Notice of Removal for the removal of this case from the Supreme Court of the State of New York, Richmond County, to the United States District Court for the Eastern District of New York, pursuant to 28 U.S.C. §§ 1441(a) and 1443. In support thereof, Defendants respectfully state as follows:

1. On or about December 2, 2022, Joseph Garofalo (“Plaintiff” or “Garofalo”), through his attorney Amy Bellantoni, Esq., filed a combined special proceeding pursuant to Article 78 of the CPLR and a civil action seeking declaratory, injunctive, and compensatory relief arising from the alleged violation of his constitutional rights, in the Supreme Court of the State of New York, County of Richmond, under Index No. 85250/2022, naming the above-captioned defendants as parties in the action/proceeding.

2. Plaintiff alleges that Defendants were served with the Notice of Petition, Summons, and Verified Petition and Complaint for Injunctive and Declaratory Relief in the

above-entitled action/proceeding on or about December 2, 2022. A copy of the Notice of Petition, Summons, and Verified Petition and Complaint for Injunctive and Declaratory Relief is annexed hereto as Exhibit “A.”

3. The above-captioned action is a civil action of which the District Court has original jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question), in that it alleges claims which arise under the Constitution and laws of the United States.

4. Specifically, the Complaint alleges that Defendants violated Plaintiff’s federal civil rights under 42 U.S.C. § 1983 and the Second and Fourteenth Amendments. See Exhibit “A” at ¶¶ 1, 3-4, 8, 78-79, 84, 86, and the “Wherefore Clause.”

5. This action stems from the denial of Plaintiff’s applications for rifle/shotgun and handgun licenses by the New York City Police Department, License Division (“License Division”). See id. at ¶ 24. Plaintiff alleges that the rules and laws relied upon by the License Division to deny Plaintiff’s applications are unconstitutional and violative of the Second and Fourteenth Amendments. See id. at ¶¶ 55, 66, 77-78, 82, and “Wherefore Clause.” Plaintiff seeks a declaration to that effect and preliminary and permanent injunctions against the enforcement of such rules and laws. See id. at “Wherefore Clause.” Plaintiff also argues, and seeks a declaration, that the standard of review applicable to Article 78 proceedings violates the Second and Fourteenth Amendments because it places the burden on the petitioner and the standard is too deferential. See id. at ¶¶ 69-70, 79, and “Wherefore Clause.” Plaintiff also seeks compensatory damages and “reasonable” attorney’s fees under 42 U.S.C. § 1988. See id. at “Wherefore Clause.”

6. Based on the above paragraphs, this action presents a federal question over which the District Court has original jurisdiction and this action is therefore removable to the

District Court without regard to the citizenship or residence of the parties, pursuant to 28 U.S.C. §§ 1441(a) and 1443.

7. Notwithstanding the Article 78 relief sought by Joseph Garofalo, the entire case may be removed to this Court pursuant to 28 U.S.C. § 1441(c)(1)(B).

8. This Notice of Removal is timely because it is being filed within thirty days (30) days of receipt of the initial pleading placing Defendants on notice of the Plaintiff's federal claims. See 28 U.S.C. § 1446(b).

9. Defendants are unaware of any previous application for the relief requested herein.

10. Annexed hereto as Exhibit "B" is a completed Civil Cover Sheet.

11. Defendants will promptly serve a copy of this Notice of Removal on counsel for Plaintiff, and will file a copy of this Notice of Removal with the Clerk of the state court in which the action has been pending, pursuant to 28 U.S.C. §1446(d).

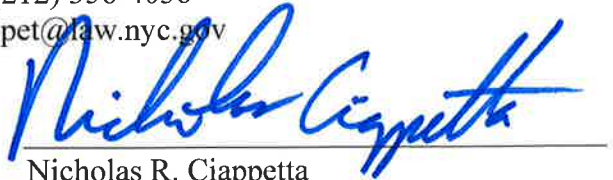
12. Defendants reserve all claims and defenses, including, without limitation, those set forth in Federal Rule of Civil Procedure 12(b).

WHEREFORE, Defendants respectfully request that the above-captioned action be removed from the Supreme Court of the State of New York, County of Richmond, to the United States District Court for the Eastern District of New York.

Dated: New York, New York
December 15, 2022

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